

AMENDED IN SENATE APRIL 22, 2015

**SENATE BILL**

**No. 495**

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**Introduced by Senator Stone**

February 26, 2015

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An act to amend Section 18662 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 495, as amended, Stone. Income taxes: withholding: real property sales.

Existing law requires the transferee of a California real property interest, in specified circumstances, to withhold, for income tax purposes,  $3\frac{1}{3}\%$  of the sales price of the property when the property is acquired from either an individual, or a partnership or corporation without a permanent place of business, as specified. Existing law also allows, by election of the transferor, alternative withholding amounts that are not less than the amount of gain required to be recognized under income tax laws multiplied by the corporation tax rate, bank and financial corporate tax rate, the highest personal income tax rate, or the current "S" corporation tax rate plus the highest personal income tax rate, as applicable.

~~This bill would, in the case of any disposition of a California real property interest in taxable years beginning on or after January 1, 2016, provide that withholding would not be required if a transferor makes a written election, in a form prescribed by the Franchise Tax Board, to remit any tax due with the filing of any required tax return.~~

*This bill would eliminate these withholding provisions for the disposition of a California real property interest that occurs on or after January 1, 2016, and would instead require the transferee of a*

*California real property interest to withhold 3 1/3% of the purchase price of the property if the property was either acquired from a person, who is not a resident or who after the transfer of the real property will no longer be a resident of this state, or from a corporation, if after the transfer that corporation has no permanent place of business in this state.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 18662 of the Revenue and Taxation Code  
2     is amended to read:  
3     18662. (a) The Franchise Tax Board may, by regulation,  
4     require any person, in whatever capacity acting, including lessees  
5     or mortgagors of real or personal property, fiduciaries, employers,  
6     and any officer or department of the state, or any political  
7     subdivision or agency of the state, or any city organized under a  
8     freeholder's charter, or any political body not a subdivision or  
9     agency of the state, having the control, receipt, custody, disposal,  
10    or payment of items of income specified in subdivision (b), to  
11    withhold an amount, determined by the Franchise Tax Board to  
12    reasonably represent the amount of tax due when the items of  
13    income are included with other income of the taxpayer, and to  
14    transmit the amount withheld to the Franchise Tax Board at the  
15    time as it may designate.  
16    (b) The items of income referred to in subdivision (a) are  
17    interest, dividends, rents, prizes and winnings, premiums, annuities,  
18    emoluments, compensation for services, including bonuses,  
19    partnership income or gains, and other fixed or determinable annual  
20    or periodical gains, profits, and income.  
21    (c) The Franchise Tax Board may authorize the tax under  
22    subdivision (a) to be deducted and withheld from the interest upon  
23    any securities the owners of which are not known to the  
24    withholding agent.  
25    (d) Any person that fails to withhold from any payments any  
26    amounts required to be withheld by this section or fails to remit  
27    the taxes withheld is liable for the amount specified in Section  
28    18668.

(e) (1) This ~~subdivision~~ *paragraph* applies to any disposition of a California real property interest *that occurs before January 1, 2016*, by:

(A) Any person, other than either of the following:

(i) Except as otherwise provided in this ~~subdivision~~, *paragraph*, a corporation, including an entity classified for tax purposes as a corporation under Part 11 (commencing with Section 23001).

(ii) Except as otherwise provided in this ~~subdivision~~, *paragraph*, a partnership, as determined in accordance with Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, including an entity classified as a partnership for tax purposes under Part 10 (commencing with Section 17001).

(B) A corporation or partnership, if that corporation or partnership immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation or partnership has no permanent place of business in California if all of the following apply:

(i) It is not organized and existing under the laws of California.

(ii) It does not qualify with the office of the Secretary of State to transact business in California.

(iii) It does not maintain and staff a permanent office in California.

(2) (A) Except as provided in subparagraph (B), in the case of any disposition of a California real property interest by a transferor described in paragraph (1), the transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to withhold an amount equal to  $3\frac{1}{3}$  percent of the sales price of the California real property conveyed.

(B) If the transferor makes an election under this subparagraph, the transferee, including any intermediary or accommodator in a deferred exchange, is required to withhold an amount equal to an amount certified by the transferor in writing under penalty of perjury. The amount certified shall not be less than the gain required to be recognized under Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001) on the disposition of the California real property multiplied by the rate specified in either Section 23151 or ~~Section~~ 23186, as applicable, for transferors that are corporations, or the highest rate specified in Section 17041 for transferors other than corporations. For

1 purposes of applying the previous sentence, the following shall  
2 apply:

3 (i) The highest rate specified in Section 17041 is determined  
4 without regard to any other tax rate specified under Part 10  
5 (commencing with Section 17001) irrespective of whether the  
6 applicable statute provides that tax shall be treated as if imposed  
7 under Section 17041.

8 (ii) For corporations that are “S” corporations subject to the  
9 modified tax rate specified in Section 23802, the rate shall be the  
10 sum of the rate specified in subdivision (b) of Section 23802 and  
11 the highest rate specified in Section 17041, as described in clause  
12 (i).

13 (C) (i) The written certification required by subparagraph (B)  
14 shall be in a form, as prescribed by the Franchise Tax Board. The  
15 form shall provide as follows:

16 “Title and escrow persons and exchange accommodators are not  
17 authorized to provide legal or accounting advice for purposes of  
18 determining withholding amounts. Transferors are strongly  
19 encouraged to consult with a competent tax professional for this  
20 purpose.”

21 (ii) The Franchise Tax Board shall make this form available  
22 electronically on its *Internet* Web site in a format that allows a  
23 transferor to complete and print the form. The Franchise Tax Board  
24 shall also provide electronic means to enable the transferor to  
25 estimate the amount of gain required to be recognized by the  
26 transferor in the transaction. Any form or worksheet, electronic or  
27 otherwise, developed for this purpose shall provide as follows:

28 “Title and escrow persons and exchange accommodators are not  
29 authorized to provide legal or accounting advice for purposes of  
30 determining withholding amounts. Transferors are strongly  
31 encouraged to consult with a competent tax professional for this  
32 purpose.”

33 (3) (A) *On or after January 1, 2016, in the case of any*  
34 *disposition of a California real property interest by a person (but*  
35 *not a partnership as determined in accordance with Subchapter*  
36 *K of Chapter 1 of Subtitle A of the Internal Revenue Code, or a*  
37 *corporation), when the return required to be filed with the*  
38 *Secretary of the Treasury under Section 6045(e) of the Internal*  
39 *Revenue Code indicates, or the authorization for the disbursement*  
40 *of the transaction’s funds instructs, that the funds be disbursed*

1 *either to a transferor with a last known street address outside the*  
2 *boundaries of this state at the time of the transfer of the title to the*  
3 *California real property or to the financial intermediary of the*  
4 *transferor, the transferee shall be required to withhold an amount*  
5 *equal to 3½ percent of the sales price of the California real*  
6 *property conveyed.*

7 *(B) In the case of any disposition of a California real property*  
8 *interest by a corporation, the transferee shall be required to*  
9 *withhold an amount equal to 3½ percent of the sales price of the*  
10 *California real property conveyed, if the corporation immediately*  
11 *after the transfer of the title to the California real property has no*  
12 *permanent place of business in California. For purposes of this*  
13 *subdivision, a corporation has no permanent place of business in*  
14 *California if all of the following apply:*

15 *(i) It is not organized and existing under the laws of California.*

16 *(ii) It does not qualify with the office of the Secretary of State*  
17 *to transact business in California.*

18 *(iii) It does not maintain and staff a permanent office in*  
19 *California.*

20 ~~(3)~~

21 *(4) Notwithstanding any other provision of this subdivision, all*  
22 *of the following shall apply:*

23 *(A) No transferee is required to withhold any amount under this*  
24 *subdivision unless the sales price of the California real property*  
25 *conveyed exceeds one hundred thousand dollars (\$100,000).*

26 *(B) No transferee, other than an intermediary or an*  
27 *accommodator in a deferred exchange, is required to withhold any*  
28 *amount under this subdivision unless written notification of the*  
29 *withholding requirements of this subdivision has been provided*  
30 *by the real estate escrow person.*

31 *(C) (i) No transferee, trustee under a deed of trust, or mortgagee*  
32 *under a mortgage with a power of sale is required to withhold*  
33 *under this subdivision when the transferee has acquired California*  
34 *real property at a sale pursuant to a power of sale under a mortgage*  
35 *or deed of trust or a sale pursuant to a decree of foreclosure or has*  
36 *acquired the property by a deed in lieu of foreclosure.*

37 *(ii) No transferee is required to withhold under this subdivision*  
38 *when the transferor is a bank acting as trustee other than a trustee*  
39 *of a deed of trust.*

1 (D) No transferee, including for this purpose any intermediary  
2 or accommodator in a deferred exchange, is required to withhold  
3 any amount under this subdivision if the transferee, in good faith  
4 and based on all the information of which he or she has knowledge,  
5 relies on a written certificate executed by the transferor, certifying,  
6 under penalty of perjury, one of the following:

7 (i) (I) The California real property being conveyed is the seller's  
8 or decedent's principal residence, within the meaning of Section  
9 121 of the Internal Revenue Code.

10 (II) The last use of the property being conveyed was use by the  
11 transferor as the transferor's principal residence within the meaning  
12 of Section 121 of the Internal Revenue Code.

13 (ii) (I) The California real property being conveyed is being  
14 exchanged, or will be exchanged, for property of like kind, within  
15 the meaning of Section 1031 of the Internal Revenue Code, but  
16 only to the extent of the amount of the gain not required to be  
17 recognized for California income or franchise tax purposes under  
18 Section 1031 of the Internal Revenue Code.

19 (II) Subclause (I) may not apply if an exchange does not qualify  
20 for nonrecognition treatment for California income or franchise  
21 tax purposes under Section 1031 of the Internal Revenue Code, in  
22 whole or in part, due to the failure of the transaction to comply  
23 with the provisions of Section 1031(a)(3) of the Internal Revenue  
24 Code, relating to the requirement that property be identified and  
25 that the exchange be completed not more than 180 days after the  
26 transfer of the exchanged property.

27 (III) In any case where clause (ii) applies, the transferee,  
28 including for this purpose any intermediary or accommodator in  
29 a deferred exchange, is required to notify the Franchise Tax Board  
30 in writing within 10 days of the expiration of the statutory periods  
31 specified in Section 1031(a)(3) of the Internal Revenue Code and  
32 thereafter remit the applicable withholding amounts determined  
33 under this subdivision in accordance with paragraph (4).

34 (iii) The California real property has been compulsorily or  
35 involuntarily converted, within the meaning of Section 1033 of  
36 the Internal Revenue Code, and the transferor intends to acquire  
37 property similar or related in service or use so as to be eligible for  
38 nonrecognition of gain for California income tax purposes under  
39 Section 1033 of the Internal Revenue Code.

1 (iv) The transaction will result in either a net loss or a net gain  
2 not required to be recognized for California income or franchise  
3 tax purposes.

4 (v) The transferor is a corporation with a permanent place of  
5 business in California.

6 (E) (i) In the case of any transaction otherwise subject to this  
7 subdivision that qualifies as an “installment sale,” within the  
8 meaning of Section 453(b) of the Internal Revenue Code, for  
9 California income tax purposes, the provisions of this subdivision  
10 shall be separately applied to each principal payment to be made  
11 under the terms of the installment sale agreement between the  
12 parties.

13 (ii) For purposes of clause (i), subparagraph (A) of paragraph  
14 ~~(3)~~ (4) does not apply to each individual payment to be received  
15 under the terms of the installment sale agreement.

16 ~~(4)~~

17 (5) (A) Amounts withheld and payments made in accordance  
18 with this subdivision shall be reported and remitted to the Franchise  
19 Tax Board in the form and manner and at the time specified by  
20 the Franchise Tax Board. Notwithstanding the foregoing, funds  
21 withheld on individual transactions by real estate escrow persons  
22 may, at the option of the real estate escrow person, be remitted by  
23 the 20th day of the month following the close of escrow for the  
24 individual transaction, or may be remitted on a monthly basis in  
25 combination with other transactions closed during that month.

26 (B) The transferor shall submit a copy of the written certificate  
27 and supporting documentation for the reduced withholding  
28 specified in subparagraph (B) of paragraph (2) or subparagraph  
29 (D) of paragraph ~~(3)~~; (4), executed by the transferor, to the  
30 Franchise Tax Board upon request.

31 ~~(5)~~

32 (6) For purposes of this subdivision, “California real property  
33 interest” means an interest in real property located in California  
34 and defined in Section 897(c)(1)(A)(i) of the Internal Revenue  
35 Code.

36 ~~(6)~~

37 (7) For purposes of this subdivision, “real estate escrow person”  
38 means any of the following persons involved in the real estate  
39 transaction:

1 (A) The person, including any attorney, escrow company, or  
2 title company, responsible for closing the transaction.

3 (B) If no person described in subparagraph (A) is responsible  
4 for closing the transaction, then any other person who receives  
5 and disburses the consideration or value for the interest or property  
6 conveyed.

7 ~~(7)~~

8 (8) (A) Unless the real estate escrow person provides  
9 “assistance,” it shall be unlawful for any real estate escrow person  
10 to charge any customer for complying with the requirements of  
11 this subdivision.

12 (B) For purposes of this paragraph, “assistance” includes, but  
13 is not limited to, helping the parties clarify with the Franchise Tax  
14 Board the issue of whether withholding is required under this  
15 subdivision or, upon request of the parties, withholding an amount  
16 under this subdivision and remitting that amount to the Franchise  
17 Tax Board.

18 (C) For purposes of this paragraph, “assistance” does not include  
19 providing the written notification of the withholding requirements  
20 of this subdivision.

21 (D) In a case where the real estate escrow person provides  
22 “assistance” in complying with the withholding requirements of  
23 this subdivision, it shall be unlawful for the real estate escrow  
24 person to charge any customer a fee that exceeds forty-five dollars  
25 (\$45).

26 ~~(8)~~

27 (9) For purposes of this subdivision, “sales price” means the  
28 sum of all of the following:

29 (A) The cash paid, or to be paid, but excluding for this purpose  
30 any stated or unstated interest or original issue discount, as  
31 determined under Sections 1271 through to 1275, inclusive, of the  
32 Internal Revenue Code.

33 (B) The fair market value of other property transferred, or to be  
34 transferred.

35 (C) The outstanding amount of any liability assumed by the  
36 transferee or to which the California real property interest is subject  
37 immediately before and after the transfer.

38 ~~(9)~~

39 (10) The Franchise Tax Board may prescribe, by forms,  
40 instructions, published notices, or regulations, any requirements



1 necessary for the efficient administration of this subdivision  
2 relating to the treatment of “de minimis” amounts otherwise  
3 required under this section.

4 ~~(10) (A) Notwithstanding any other law, in the case of any~~  
5 ~~disposition of a California real property interest in taxable years~~  
6 ~~beginning on or after January 1, 2016, if not otherwise exempt,~~  
7 ~~withholding is not required under this section if a transferor makes~~  
8 ~~an election under this paragraph to remit any tax due with the filing~~  
9 ~~of any tax return required by this part.~~

10 ~~(B) The election shall be made in a written form, as prescribed~~  
11 ~~by the Franchise Tax Board. The Franchise Tax Board may~~  
12 ~~prescribe, by forms, instructions, published notices, or regulations,~~  
13 ~~any requirements necessary for the efficient administration of this~~  
14 ~~paragraph, including the timing of making the election.~~

15 (f) Withholding is not required under this section with respect  
16 to wages, salaries, fees, or other compensation paid by a  
17 corporation for services performed in California for that corporation  
18 to a nonresident corporate director for director services, including  
19 attendance at a board of directors’ meeting.

20 (g) In the case of any payment described in subdivision (f), the  
21 person making the payment shall do each of the following:

22 (1) File a return with the Franchise Tax Board at the time and  
23 in the form and manner specified by the Franchise Tax Board.

24 (2) Provide the payee with a statement at the time and in the  
25 form and manner specified by the Franchise Tax Board.

26 (h) (1) The amendments to this section made by Chapter 488  
27 of the Statutes of 2002 apply to dispositions of California real  
28 property interests that occur on or after January 1, 2003.

29 (2) In the case of any payments received on or after January 1,  
30 2003, pursuant to an installment sale agreement relating to a  
31 disposition occurring before January 1, 2003, the amendments to  
32 this section made by Chapter 488 of the Statutes of 2002 do not  
33 apply to those payments.

34 (i) (1) The amendments made to this section by the act adding  
35 this subdivision shall apply to dispositions of California real  
36 property interests that occur on or after January 1, 2009.

37 (2) In the case of any payments received on or after January 1,  
38 2009, pursuant to an installment sale agreement relating to a  
39 disposition occurring before January 1, 2009, the amendments

- 1 made to this section by the act adding this subdivision do not apply
- 2 to those payments.

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